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FEDERAL COMMUNICATIONS COMMISSION Washington, D. C. 20554 NOV 2.0 2012

OFFICE OF MANAGING DIRECTOR

Deborah Murphy
Office Manager
Thistle Communications, LLC
1 Industrial Park Drive, Unit #6
Pelham, NH 03076

Re: Waiver Request (Late Payment Penalty; 47 U.S.C. § 159(c)(1), 31 U.S.C. § 3717, 47 C.F.R. § 1.1164)

Licensee/Applicant: Thistle Communications, LLC

Station: N/A

Fee: FY 2011 Regulatory Fee Late Fee Date Request Filed: Mar. 12, 2012 Date Regulatory Fee Paid: Mar. 12, 2012

Date Regulatory Late Penalties Paid: Mar. 12, 2012

Fee Control No.: RROG-11-00014190

Dear Ms. Murphy:

This responds to Licensee's *Request*¹ for waiver and refund of the statutory penalty, interest and penalty charges, and collection charges (*penalties*) that accrued because Licensee did not pay its Fiscal Year (FY) 2011 regulatory fee. For the reasons stated herein, we must deny the *Request*.

Under 47 U.S.C. § 159 and the Commission's implementing rules, we are required to "assess and collect regulatory fees" to recover the costs of the Commission's regulatory activities,² and when the required payment is received late or it is incomplete, and it is "not excused by bank error," then to assess a penalty equal to "25 percent of the amount of the fee which was not paid in a timely manner." Thereafter, as required by the law, 5 from the date of

¹ Letter from Deborah Murphy, Office Manager, Thistle Communications, 1 Industrial Park Drive, Unit #6, Pelham, NH 03076 to FCC, Regulatory Fees, PO Box 979084, St. Louis, MO 63197 (Mar. 12, 2012)(Request).

² 47 U.S.C. § 159(a)(1); 47 C.F.R. § 1.1151.

³ 47 C.F.R. § 1.1164.

⁴ 47 U.S.C. § 159(c)(1); 47 C.F.R. § 1.1164.

⁵ 31 U.S.C. §3717; 47 C.F.R. §§ 1.1164(f)(4), 1.1940; In The Matter Of Implementation Of Section 9 Of The Communications Act, Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year, Report and Order, 9 FCC Rcd 5333, 5354 ¶ 65 (1994) ("Included in the recovery of any delinquent fee will be an assessment of interest on the debt due, a penalty for nonpayment, and the allowable cost incurred due to the federal government in the collection process."); In The Matter Of Assessment And Collection Of Regulatory Fees For Fiscal Year 2010, Report and Order, 25 FCC Rcd 9278, 9297-98 ¶ 54 (2010) ("A late payment penalty of 25 percent of the unpaid amount of the required regulatory fee will be assessed on the first day following the deadline date for filing of these fees. Failure to pay regulatory fees and/or any late penalty will subject regulatees to sanctions, including those set forth in section 1.1910 of the Commission's Rules and in the Debt Collection Improvement Act of 1996 ("DCIA").

delinquency, we assess interest, penalties, and administrative charges for collection. For FY 2011, the deadline for paying regulatory fees was September 16, 2011." Licensee's payment was not received and credited until March 12, 2012, thus Licensee failed to meet its obligation. Licensee's assertions that "this was [Licensee's] first cycle and [it was] unaware that [it had] to check the website and [it was] never notified of the procedure" are not a legal grounds or clear mitigating circumstances to waive collection of the penalty. The Commission has repeatedly held that "[l]icensees are expected to know and comply with the Commission's rules and regulations and will not be excused for violations thereof, absent clear mitigating circumstances." The absence of a reminder notice is not an excuse. Indeed, beginning in 2009, the Commission provided ample notice that it would not be sending paper pre-bills to regulatees.

On May 14, 2009, the Commission proposed to mandate electronic filing of regulatory fee information through the agency's Fee Filer system. The Commission explained that, "[c]onsistent with [its] proposal to require mandatory use of Fee Filer ... pre-bill information would be loaded into Fee Filer for viewing, but would not be mailed directly to the licensee via surface mail." On July 31, 2009, the Commission released its order adopting these proposals. In that order, the Commission advised regulatees that "because all pre-bills will be loaded into Fee Filer, once Fee Filer becomes operational, this will be the signal by which licensees can view their pre-bill information online." The Commission issued a public notice informing regulatees that use of Fee Filer was mandatory in FY 2009 and that "regulatory fee bills will no longer be mailed to the regulatee, but can be viewed by logging on the Fee Filer." On September 2, 2009, the Commission released a third public notice reiterating that "HARDCOPY BILLS WILL NO LONGER BE MAILED BY THE FCC."

Similarly, the Commission's final order on the FY 2010 regulatory fees reaffirmed that regulatees should "check[] the Commission's website periodically beginning in July" in order to

We also assess administrative processing charges on delinquent debts to recover additional costs incurred in processing and handling the related debt pursuant to the DCIA and section 1.1940(d) of the Commission's rules. These administrative processing charges will be assessed on any delinquent regulatory fee, in addition to the 25 percent late charge penalty. In case of partial payments (underpayments) of regulatory fees, the licensee will be given credit for the amount paid, but if it is later determined that the fee paid is incorrect or not timely paid, then the 25 percent late charge penalty (and other charges and/or sanctions, as appropriate) will be assessed on the portion that is not paid in a timely manner.").

⁶ See FY 2011 Regulatory Fees Due No Later Than September 14, 2011, Eastern Time, Public Notice, DA 11-1420 (Aug. 17, 2011); FY 2011 Regulatory Fee Deadline Is Extended To 11:59 PM ET, September 16, 2011, Public Notice, DA 11-1559 (Sep. 15, 2011).

⁷ Request.

⁸ See Sitka Broadcasting Co., Inc., 70 FCC 2d 2375, 2378 (1979), citing Lowndes County Broadcasting Co., 23 FCC 2d 91 (1970) and Emporium Broadcasting Co., 23 FCC 2d 868 (1970); see also NextGen Telephone (OMD, Apr. 22, 2010); Istel, Inc. (OMD, Apr. 22, 2010).

⁹ Assessment and Collection of Regulatory Fees for Fiscal Year 2009, Notice of Proposed Rulemaking and Order, 24 FCC Rcd 5966, 5972 ¶ 16 (2009).

¹⁰ Id. at 5973 ¶ 20.

Assessment and Collection of Regulatory Fees for Fiscal Year 2009, Report and Order, 24 FCC Rcd 10301, 10307-09 ¶¶ 18-27 (2009) (FY 2009 Regulatory Fees NPRM).

¹³ Fee Filer Mandatory for FY 2009 Regulatory Fees, Public Notice, 24 FCC Rcd 10893 (Aug. 21, 2009).

¹⁴ Payment Methods and Procedures for Fiscal Year 2009 Regulatory Fees, *Public Notice*, 24 FCC Rcd 11513, 11514 (2009) (emphasis in original).

"ascertain the fee due date, and receive instructions on how to access Fee Filer, view their bill, and make a fee payment." This notification was part of the Commission's increased effort to notify licensees that hardcopy bills will no longer be mailed. 16

Every licensee is obliged to make the fee payment by the deadline. Although the Commission has waived late fees on a showing of good cause, neither the statute nor the Commission's regulations contemplates a waiver of or reduction in the late payment penalty based on the amount of time after the deadline within which the regulatee satisfies its payment obligations; indeed, the penalty for late payment applies even to situations where the deadline is missed by a short period of time. ¹⁷ The penalty required by 47 U.S.C. § 159(c)(1) is not limited to situations where the failure to pay was knowing or willful, and if it is to be waived, it is "only in the most extraordinary circumstances," which Licensee did not establish. Thus, we must deny the *Request*.

If Licensee has any questions concerning this matter, please call the Revenue & Receivables Operations Group at (202) 418-1995.

Sincerely,

Mark Stephens

Chief Financial Officer

¹⁵ Assessment and Collection of Regulatory Fees for Fiscal Year 2010, *Report and Order*, 25 FCC Rcd 9278, 9291 ¶ 37 (2010).

¹⁶ See Assessment and Collection of Regulatory Fees for Fiscal Year 2010, Notice of Proposed Rulemaking, 25 FCC Rcd 3918, 3923 ¶ 12 (2010).

¹⁷ See XO Communications, LLC (OMD, Nov. 10, 2010).

¹⁸ McLeodUSA Telecommunications Services, Inc., Memorandum Opinion and Order, 19 FCC Rcd 6587, 6589 (2004) (denying the request for waiver of 25 percent penalty).

Stephen French

From: Deb Murphy [DMurphy@thistlecommunications.net]

Sent: Monday, March 12, 2012 2:14 PM

To: ARINQUIRIES
Cc: Jim Thistle

Hello,

My name is Deborah Murphy. I am writing in reference to a Demand Letter that I received for Thistle Communications. Our account number is 0019873744 and the Bill Number is BRF R11E004274 1. I spoke with someone from the FCC on the phone earlier today and she advised me that bills do not get generated and it is our responsibility to check on the FCC website every August and pay the Bill.

When I received this demand notice, I immediately paid it and a check was mailed on March 8, 2012. Since this was our first cycle and we were unaware that we would have to check the website and were never notified of the procedure, I was hoping to get a reimbursement the \$119.76 which was paid in interest and penalties.

Please note, I will be sure to check the website every August so this does not happen again.

Thank you very much for your time.

Deborah Murphy
Office Manager
Thistle Communications, LLC
1 Industrial Park Drive
Unit #6
Pelham, NH 03076
(P)1-603-598-5100
(F)1-603-598-5101

email: dmurphy@thistlecommunications.net

3/12/12



March 12, 2012

Federal Communications Commission Regulatory Fees P.O. Box 979084 St. Louis, MD 63197-9000

Re: Thistle Communications, LLC-Account Number 0019873744

To Whom It May Concern:

My name is Deborah Murphy. I am writing in reference to a Demand Letter that I received for Thistle Communications. Our account number is 0019873744 and the Bill Number is BRF R11E004274 1. I spoke with someone from the FCC on the phone earlier today and she advised me that bills do not get generated and it is our responsibility to check on the FCC website every August and pay the Bill.

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Deborah Murphy
Office Manager
email: dmurphy@thistlecommunications.net